

PATENT COOPERATION TREATY

From the
INTERNATIONAL SEARCHING AUTHORITY

To:
MARK FARBER
US SURGICAL
A DIVISION OF TYCO HEALTHCARE GROUP, LP
150 GLOVER AVENUE
NORWALK, CT 06856

PCT

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

(PCT Rule 43bis.1)

Date of mailing (day/month/year) 15 DEC 2004			
Applicant's or agent's file reference 2901 PCT(203-3634 PCT)		FOR FURTHER ACTION See paragraph 2 below	
International application No. PCT/US04/13273	International filing date (day/month/year) 29 April 2004 (29.04.2004)	Priority date (day/month/year) 01 May 2003 (01.05.2003)	
International Patent Classification (IPC) or both national classification and IPC IPC(7): A61B 18/18 and US Cl.: 606/51			
Applicant SHERWOOD SERVICES AG			

1. This opinion contains indications relating to the following items:

- ☒ Box No. I Basis of the opinion
- ☐ Box No. II Priority
- ☐ Box No. III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- ☐ Box No. IV Lack of unity of invention
- ☒ Box No. V Reasoned statement under Rule 43bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- ☐ Box No. VI Certain documents cited
- ☐ Box No. VII Certain defects in the international application
- ☐ Box No. VIII Certain observations on the international application

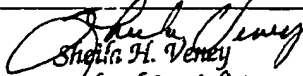
2. FURTHER ACTION

If a demand for international preliminary examination is made, this opinion will be considered to be a written opinion of the International Preliminary Examining Authority ("IPEA") except that this does not apply where the applicant chooses an Authority other than this one to be the IPEA and the chosen IPEA has notified the International Bureau under Rule 66.1bis(b) that written opinions of this International Searching Authority will not be so considered.

If this opinion is, as provided above, considered to be a written opinion of the IPEA, the applicant is invited to submit to the IPEA a written reply together, where appropriate, with amendments, before the expiration of 3 months from the date of mailing of Form PCT/ISA/220 or before the expiration of 22 months from the priority date, whichever expires later.

For further options, see Form PCT/ISA/220.

3. For further details, see notes to Form PCT/ISA/220.

Name and mailing address of the ISA/ US Mail Stop PCT, Attn: ISA/US Commissioner for Patents P.O. Box 1450 Alexandria, Virginia 22313-1450 Facsimile No. (703) 305-3230	Authorized officer Linda Dvorak Telephone No. (703) 308-0858 <div style="text-align: right;">  Stephen H. Venev <i>Paralegal Specialist</i> Tech. Center 3700 </div>
--	---

WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY

International application No.

PCT/US04/13273

Box No. 1 Basis of this opinion

1. With regard to the language, this opinion has been established on the basis of the international application in the language in which it was filed, unless otherwise indicated under this item.

- ☐ This opinion has been established on the basis of a translation from the original language into the following language _____, which is the language of a translation furnished for the purposes of international search (under Rules 12.3 and 23.1(b)).

2. With regard to any nucleotide and/or amino acid sequence disclosed in the international application and necessary to the claimed invention, this opinion has been established on the basis of:

a. type of material

- ☐ a sequence listing
☐ table(s) related to the sequence listing

b. format of material

- ☐ in written format
☐ in computer readable form

c. time of filing/furnishing

- ☐ contained in international application as filed.
☐ filed together with the international application in computer readable form.
☐ furnished subsequently to this Authority for the purposes of search.

3. ☐ In addition, in the case that more than one version or copy of a sequence listing and/or table relating thereto has been filed or furnished, the required statements that the information in the subsequent or additional copies is identical to that in the application as filed or does not go beyond the application as filed, as appropriate, were furnished.

4. Additional comments:

**WRITTEN OPINION OF THE
INTERNATIONAL SEARCHING AUTHORITY**

International application No.
PCT/US04/13273

Box No. V Reasoned statement under Rule 43 bis.1(a)(i) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Claims <u>3-8, 11 and 12</u>	YES
	Claims <u>1, 2, 9, 10, 13 and 14</u>	NO
Inventive step (IS)	Claims <u>3, 6, 8, 11 and 12</u>	YES
	Claims <u>1, 2, 4, 5, 7, 9, 10, 13 and 14</u>	NO
Industrial applicability (IA)	Claims <u>1-14</u>	YES
	Claims <u>NONE</u>	NO

2. Citations and explanations:

Claims 1, 2, 9, 10, 13 and 14 lack novelty under PCT Article 33(2) as being anticipated by Truckai et al (6,770,072).

Claims 4, 5 and 7 lack an inventive step under PCT Article 33(3) as being obvious over Truckai et al (6,770,072) in view of the teaching of Buysse et al (6,398,779). Truckai et al disclose an electrosurgical forceps device whereby the jaw is provided with a conductive sealing surface and an intermediary surface of a thermally conductive and electrically non-conductive material (col. 16). Truckai et al do not specifically disclose the materials for the housing and the non-conductive material, and also fail to specifically disclose the use of a stop member for limiting closure of the jaws. With regard to the specific materials used to make the device, this is deemed an obvious consideration for one of ordinary skill in the art. Concerning the stop member, Buysse et al teach that it is generally known to provide a forceps device with a stop member to limit the closure of the device. To have provided the Truckai et al device with a stop member to limit the closure of the jaws would have been an obvious modification for one of ordinary skill in the art in view of the teaching of Buysse et al.

Claims 3, 6, 8, 11 and 12 meet the criteria set out in PCT Article 33(2)-(3), because the prior art does not teach or fairly suggest the specific arrangement of the thermally conductive, electrically non-conductive material in relationship to the sealing member.